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6 **IN THE UNITED STATES DISTRICT COURT FOR THE**
7 **EASTERN DISTRICT OF CALIFORNIA**

8 **JESUS ALBIZU,**) **CV F 02-5875 AWI SMS**
9 **Plaintiff,**)
10 **v.**) **ORDER DENYING MOTION TO**
11 **CLYDE A. STROHL, et al.,**) **REQUEST APPEAL OF FINDINGS**
12 **Defendants.**) **AND RECOMMENDATIONS**
13 (Documents #143 & #148)

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15 On November 14, 2005, the Magistrate Judge filed Findings and a Recommendation that
16 Plaintiff's application for default judgment be granted. The Findings and Recommendation were
17 served on all parties

18 On December 7, 2005, Defendants filed a document entitled "NOTICE OF MOTION
19 AND MOTION TO REQUEST AN APPEAL TO THE FINDINGS AND
20 RECOMMENDATIONS RE: WESLEY E. AMUNDSON AND AMUNDSON AND
21 ASSOCIATES DATED NOVEMBER 10, 2005."

22 On December 27, 2005, the court adopted the November 14, 2005 Findings and
23 Recommendations, granted Plaintiff's application for default judgment, and directed the Clerk of
24 the Court to enter final judgment in favor of Plaintiff Jesus Albizu against Defendants Wesley E.
25 Amundson and Amundson and Associates for \$157,800.00 in damages; prejudgment interest at
26 the rate of ten per cent per annum from May 13, 2002; punitive damages in the sum of
27 \$306,000.00; and treble damages in the amount of \$306,000.00. On December 27, 2005, the
28 Clerk of the Court entered judgment.

1 On January 17, 2006, Defendants filed an amended motion to request an appeal of the
2 findings and recommendations.

3 Defendants' motions to appeal the findings and recommendations have been
4 administratively termed as outstanding motions. In general, the filing a notice of appeal
5 transfers jurisdiction over the matters appealed to the court of appeals, and the district court
6 generally is divested of jurisdiction over those aspects of the case involved in the appeal. Griggs
7 v. Provident Consumer Discount Co., 459 U.S. 56, 58 (1982) (per curiam); Mayweathers v.
8 Newland, 258 F.3d 930, 935 (9th Cir. 2001). However, a notice of appeal from a nonappealable
9 order will not divest the district court of jurisdiction. Estate of Conners by Meredith v.
10 O'Connor, 6 F.3d 656, 658 (9th Cir. 1993); United States v. Garner, 663 F.2d 834, 838 (9th
11 Cir.1981); Ruby v. Secretary of the Navy, 365 F.2d 385, 389 (9th Cir.1966) (en banc).

12 Here, Defendants have filed motions attempting to appeal the Magistrate Judge's
13 Findings and Recommendation, which were not an appealable order. By adopting the Findings
14 and Recommendations and granting default judgment, on December 27, 2005, the court issued a
15 final order that can be appealed.

16 Accordingly, Defendants' December 7, 2005 (Document #143) motion to request an
17 appeal and January 17, 2006 (Document #148) motion to request an appeal are DENIED as moot
18 and unnecessary.

19
20 IT IS SO ORDERED.

21 **Dated: August 15, 2006**
22 0m8i78

/s/ Anthony W. Ishii
UNITED STATES DISTRICT JUDGE